

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

|                              |   |                          |
|------------------------------|---|--------------------------|
| IN RE:                       | § | CASE NO. 09-20338-C-13   |
|                              | § |                          |
| JOHN A GARCIA and DESIREE    | § |                          |
| GARCIA,                      | § |                          |
| Debtor                       | § | CHAPTER 13               |
|                              | § |                          |
| BAC HOME LOANS SERVICING,    | § |                          |
| LP, AS SERVICING AGENT FOR   | § |                          |
| U.S. BANK NATIONAL           | § |                          |
| ASSOCIATION AS TRUSTEE FOR   | § |                          |
| THE TRUMAN FHA TRUST         | § |                          |
| 2008-1 ITS ASSIGNS AND/OR    | § |                          |
| SUCCESSORS IN INTEREST,      | § |                          |
| Movant                       | § | HEARING DATE: 06/14/2010 |
|                              | § |                          |
| v.                           | § | TIME: 09:00 AM           |
|                              | § |                          |
| JOHN A GARCIA and DESIREE    | § |                          |
| GARCIA; and CINDY BOUDLOCHE, | § |                          |
| Trustee                      | § |                          |
| Respondents                  | § | JUDGE RICHARD S. SCHMIDT |

**MOTION FOR RELIEF FROM THE STAY REGARDING EXEMPT PROPERTY**

**THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF YOU OBJECT TO THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY, YOU SHOULD CONTACT THE MOVANT IMMEDIATELY TO TRY TO REACH AN AGREEMENT. IF YOU CANNOT REACH AN AGREEMENT, YOU MUST FILE A WRITTEN RESPONSE AND SEND A COPY TO MOVANT NOT LATER THAN JUNE 07, 2010 AND YOU MUST ATTEND THE HEARING.**

**THE COPY SENT TO THE MOVANT MUST BE DELIVERED BY HAND OR ELECTRONIC DELIVERY IF IT IS SENT LESS THAN 7 DAYS PRIOR TO THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE HEARING MAY BE AN EVIDENTIARY HEARING AND THE COURT MAY GRANT OR DENY RELIEF FROM THE STAY BASED ON THE EVIDENCE PRESENTED AT THIS HEARING. IF A TIMELY OBJECTION IS FILED, THE COURT WILL CONDUCT A HEARING ON THIS MOTION ON JUNE 14, 2010 AT 9:00 AM IN COURTROOM 2nd Floor, 1133 N. SHORELINE BLVD., 2ND FLOOR, CORPUS CHRISTI, TX 78401.**

1. This Motion requests an order from the Bankruptcy Court authorizing the person filing this motion to foreclose on or to repossess the property that is identified in paragraph 3.
2. Movant: BAC HOME LOANS SERVICING, LP, AS SERVICING AGENT FOR U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR THE TRUMAN FHA TRUST 2008-1 ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST

3. Movant, directly or as agent for the holder, holds a security interest in

301 DODDRIDGE STREET  
CORPUS CHRISTI, TX 78411

THE EAST OR NORTHEAST FORTY FEET ( E OR NE 40'). OF LOT TWELVE (12),  
ALL OF LOT THIRTEEN (13). BLOCK THREE (3), LAMAR PARK SUBDIVISION  
SECTION 1. AN ADDITION TO THE CITY OF CORPUS CHRISTI, NUECES  
COUNTY, TEXAS, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN  
VOLUME 11, PAGE 25, MAP RECORDS OF NUECES COUNTY. TEXAS.

4. Movant has reviewed the schedules filed in this case. The property described in paragraph 3 is claimed as exempt by the debtor. Movant does not contest the claimed exemption.

5. Type of collateral: Real Estate.

6. Debtor's scheduled value of property: \$205,000.00.

7. Movant's estimated value of property: \$307,650.00.

8. Total amount owed to movant: \$213,574.68.

9. Estimated equity (paragraph 7 minus paragraph 8): \$94,075.32.

10. Total pre and post-petition arrearages: \$68,684.50.

11. Total post-petition arrearages: \$13,557.95.

12. Amount of unpaid, past due property taxes, if applicable: Unknown.

13. Expiration date on insurance policy, if applicable: Unknown.

14.   X   Movant seeks relief based on the debtor(s)' failure to make payments. Debtor(s)' payment history is attached as exhibit "A". Movant represents that the attached payment history is a current payment history reflecting all payments, advances, charges and credits from the beginning of the loan. Movant further represents that the payment history is self explanatory or can be interpreted by application of coding information that is also attached. Movant acknowledges that the Court may prohibit the use of parol evidence to interpret a payment history that does not satisfy these representations.

15.        Movant seeks relief based on the debtor(s)' failure to provide a certificate of insurance reflecting insurance coverage as required by the debtor's pre-petition contracts.

16. Name of Co-Debtor: Not Applicable

17. Based on the foregoing, movant seeks termination of the automatic stay to allow movant to

foreclose or repossess the debtor(s)' property and seeks to recover its costs and attorneys' fees in an amount not to exceed the amount listed in paragraph 9.

18. Movant certifies that prior to filing this motion an attempt was made to confer with the Debtor(s)' counsel (or with Debtor(s), if *pro se*) either by telephone, by email or by facsimile, by the following person on the following date and time:

Yvonne Knesek called William Whittle regarding the post petition default on the loan. She left a message detailing the arrears and requesting a return call.

April 22, 2010 at 11:42 a.m.

An agreement could not be reached. If requested by debtor and debtor's counsel, a payment history in the form attached to this motion was provided at least two days, excluding intermediate weekends and holidays, before this motion was filed.

Date: 05/05/2010

/s/ YVONNE KNESEK-FOLTZ

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YVONNE KNESEK-FOLTZ

TX NO. 11591800

S.D. TX NO. 11434

610 WEST 5TH STREET SUITE 602

AUSTIN, TX 78701

Telephone: (512) 477-0008

Facsimile: (512) 477-1112

E-mail: SDECf@BDFGROUP.COM

ATTORNEY FOR MOVANT

**Certificate of Service and Certificate of Compliance with BLR 4001**

A copy of this motion was served on the persons shown on exhibit "1" at the addresses reflected on that exhibit on May 05, 2010 via electronic means as listed on the Court's ECF Noticing System or by prepaid United States first class mail. Movant certifies that movant has complied with Bankruptcy Local Rule 4001.

/s/ YVONNE KNESEK-FOLTZ

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ATTORNEY FOR MOVANT

**EXHIBIT 1**

**DEBTORS:**

DESIREE GARCIA  
301 DODDRIDGE STREET  
CORPUS CHRISTI, TX 78411

JOHN A GARCIA  
301 DODDRIDGE STREET  
CORPUS CHRISTI, TX 78411

**TRUSTEE:**

CINDY BOUDLOCHE  
555 N. CARANCAHUA, STE. 600  
CORPUS CHRISTI, TX 78478

**DEBTOR'S ATTORNEY:**

WILLIAM ARTHUR WHITTLE  
5151 FLYNN PKWY  
STE 308  
CORPUS CHRISTI, TX 78411

**PARTIES IN INTEREST:**

INTERNAL REVENUE SERVICE  
INSOLVENCY T11-G5  
300 E 8TH ST M/S 5026 AUS  
AUSTIN, TX 78701

**PARTIES REQUESTING NOTICE:**

NUECES COUNTY  
C/O LINEBARGER GOGGAN BLAIR & SAMPSON, LLP  
2700 VIA FORTUNA DR, STE 400  
P.O. BOX 17428  
AUSTIN, TX 78760-7428

GE MONEY BANK  
C/O RECOVERY MANAGEMENT SYSTEMS CORP  
25 SE 2ND AVE, SUITE 1120  
MIAMI, FL 33131-1605